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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,383	08/21/2003	Vincent G. Copa	AMS0008/US	9726
33072	7590	06/12/2007		
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082			EXAMINER YABUT, DIANE D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 06/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/646,383

Applicant(s)

COPA ET AL.

Examiner

Diane Yabut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 26-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 26-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 May 2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by **Salama** (U.S. Patent No. 5,306,226).

Claims 1-2 and 9-10: Salama discloses a hollow elongate, flexible catheter body having a proximal end and a distal end, an inflatable balloon **26** at the distal end in the bladder, a drainage aperture **18** at the distal end and a drainage means **15** connected to the drainage aperture for draining urine from a bladder, and tissue approximating structure **36** on the catheter body at the distal end capable of contacting bladder, tissue

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of a perineal wall, urethral tissue, and combinations of these for holding severed tissue in contact for healing, wherein the inflatable balloon is on a proximal side of the drainage aperture and the tissue approximating structure is on a proximal side of the inflatable balloon (Figure 2, col. 2, lines 18-56).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 7-8, and 12-14 and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Salama** (U.S. Patent No. **5,306,226**) in view of **Seiba** (U.S. Pub. No. **20030229364**).

Claims 3, 7-8, 12-14, and 26-31 (new): Salama discloses the claimed device including a tissue approximating structure located on a proximal side of the drainage aperture, except for the tissue approximating structure comprising a tine, probe, prod, or needle, or multiple opposing tines.

Seiba teaches a tissue approximating structure **200** that includes a first tissue approximating structure **235** and a second tissue approximating structure with multiple, opposing movable tines on a catheter body **220** located on a proximal side of the first tissue approximating structure, which is beneficial during anastomosis in a radical retropubic prostatectomy to engage the urethra and bladder and facilitate fluid flow and

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patency of the two conduits (Figures 9A-9B and page 2, paragraph 25). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a tissue approximating structure, as taught by Seiba, to Salama in order to make the device applicable to anastomosis using a device that facilitates fluid flow and patency of the two conduits.

3. Claims 4-6, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Salama** (U.S. Patent No. **5,306,226**) and **Seiba** (U.S. Pub. No. **20030229364**), as applied to Claims 1, 3, and 9 above, and further in view of **Biggs et al.** (U.S. Patent No. **6,599,311**).

Claims 4-6, 11 and 14: Salama and Seiba disclose the claimed device, including an inflation lumen **20** extending from the proximal end to the balloon, a drainage lumen connected to the distal end extending from a drainage aperture **18** at the distal end to a drainage port **15** at the proximal end (Salama, Figure 2), and both distal and proximal, movable elongate tines (Seiba, Figure 9B), except for the tines being positioned to extend through apertures in the hollow catheter body and an actuating mechanism that is connected to the tissue approximating means that can be extended and retracted from apertures in the catheter body, and the actuating mechanism extends through a lumen along a portion of the length of the device to the proximal end which actuates the tissue approximating means.

Biggs et al. teaches tines **266** being positioned to extend through apertures **264** in a hollow body catheter **260** (Fig 31B and col. 20, lines 1-7). Biggs et al. also teaches

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an actuating mechanism **202** that is connected to a tissue approximating means **204** that can be extended and retracted from apertures in the catheter body, and the actuating mechanism may extend through a lumen along a portion of the length of the device to the proximal end which actuates the tissue approximating means (Figures 24A-24B, col. 19 lines 1-10). Biggs et al. teaches that this mechanism allows for the anchoring device to be advanced into a passageway in a non-extended form until it reaches a position where it can be attached to tissue and may subsequently be extended through the apertures (col. 2, lines 62-67 and col. 3, lines 1-2). It would have been obvious to one of ordinary skill in the art at the time of invention to provide extendable tines through apertures in a hollow catheter and an actuating mechanism that is connected to and actuates the tissue approximating means, as taught by Biggs et al., to Salama and Seiba in order to move the catheter, or the device within the catheter, without being engaged to the tissue until it is at a desired location at which point the tines can be extended.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-3, 7-10, and 12-14 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER